identification of the assailant calls for corroboration any more than it would in relation to any other type of offence.

Some support for this view is to be found in such reported cases as there are. It is to be remembered, however, that the reported cases where the prosecutrix is a young girl afford little assistance for in such cases corroboration is necessary not only by reason of the nature of the offence but by reason of the prosecutrix being a child whose evidence as such calls for corroboration in relation to any offence.

We would, however, refer to the cases of *Graham* [2] and *Crocker*.[3] In the case of *Graham* the appellant was convicted for having carnal knowledge of a girl under 16 years of age. The only evidence was that of the prosecutrix herself and the evidence of a doctor as to his examination of her which of course did not implicate the appellant in any way. In the course of his judgment dismissing the appeal Channell J. said this:—

"Undoubtedly, there was corroboration of parts of the girl's story. For instance, the doctor negatived the possibility of the use of mechanical means; and, under the circumstance, that was corroboration of a part of her evidence, although it was not corroboration of the part in which she put the blame on the prisoner."

In *Crocker's* case, which is about 10 years later, the appellant was convicted for some sort of sexual offence against a girl, although rather curiously the report does not say what the offence was. Nevertheless the question of corroboration arose and the Chief Justice (who was then Lord Hewart) said this:—

"The law regarding the corroboration of the evidence of accomplices has been referred to."

He then mentioned *Baskerville* and went on:—

"Now that is the law regarding the evidence of accomplices, but this Court cannot accept the contention that the evidence of a girl, the victim of the offence, is on the same plane with that of the evidence of an accomplice. The objection in such a case as this is not on the grounds of complicity, but because the case is one of an oath against an oath."

In other words it is a case of which story is to be preferred and it seems to follow from this that corroboration of any part of the prosecutrix's story is *pro tanto* of some value.

In the circumstances we find ourselves compelled to dismiss the appeal.

Appeal dismissed.

THE SHELL COMPANY OF THE FEDERATION OF MALAYA LTD. v. COMMISSIONER OF THE FEDERAL CAPITAL OF KUALA LUMPUR

[O.C.J. (Ong J.) May 29, 1964]

[K.L. — Originating Motion No. 19 of 1963]

Rating — Underground fuel tanks — Whether part of land as to be rateable — Definition of 'land' — Whether definition of 'building' excludes their rateability — Town Boards Enactment (Cap. 137), ss. 2 and 32 — Land Code (Cap. 138), s. 2 — Interpretation and General Clauses Ordinance, 1948.

The appellants are the owners of holdings under which are constructed tanks for the storage of petrol. The tanks are buried two feet below ground level and are turfed over or covered with concrete or macadam. To remove them, the turf, concrete or tarmacadam has to be taken up, the earth excavated, the concrete manhole boxes removed, all pipe connections unbolted and the tank with its concrete sinker weights then raised with blocks and tackle. The respondent, in determining the annual value of the holdings, included the value attributable to the underground storage tanks.

On appeal, the appellants contended that the tanks did not fall within the definition of 'building' and as such could not be or form part of 'a holding' and therefore not rateable. The respondent contended that the tanks had become part of the land as fixtures and as such was within the definition of 'holding' and therefore rateable.

Held: the underground tanks are land within the definition of 'land' in the Land Code and as land they are rateable;

Observations on meaning of "land" and "building" for the purposes of rating.

Cases referred to:—

(1) *The Shell Co. of the Federation of Malaya* v. *President, Town Council, Bandar Penggaram, Batu Pahat* [1962] M.L.J. 277.

(2) *Shell-Mex & B.P.* v. *Holyoak* [1959] 1 All E.R. 391; [1959] 1 W.L.R. 188.

(3) *Toronto Corporation* v. *Consumers' Gas Company of Toronto* [1916] 2 A.C. 618.

(4) *Goh Chong Hin & Anor.* v. *Consolidated Malay Rubber Estates Ltd.* 5 F.M.S.L.R. 86.

(5) *Chua Sai Ngoh* v. *Beh Ai Meng* [1955] M.L.J. 167.

(6) *Holland* v. *Hodgson* L.R. 7 C.P. 328; 335.

APPEAL against Rating Assessment.

A. L. Hills for the appellants.

Yong Pung-How for the respondent.

Cur. Adv. Vult.

Ong J.: This is an appeal by the Shell Company against rating assessments imposed by the Commissioner of the Federal Capital on the company's holdings in Kuala Lumpur consisting of petrol filling and service stations. The point at issue is whether the underground tanks at such stations are rateable.

This same question had been raised and decided in the company's favour by Adams J. in Muar two years ago: see *The Shell Company of the Federation of Malaya* v. *President, Town Council, Bandar Penggaram, Batu Pahat.*[1] Notwithstanding that decision, however, the Commissioner has included in the annual value of the company's holdings an element of value attributable to the underground storage tanks. The company's contention is that such tanks are not rateable.

The facts are not in dispute. The general design and construction of petrol-filling stations

is basically similar throughout this country and is a matter of common knowledge. A full description of the construction and emplacement of the tanks may be read in the judgment of Adams J. and so need not be restated here.

To start with, Mr. Hills, who had also argued the appeal in Muar, repeats the arguments which he had then put forward and which had found favour with Adams J. Briefly, his contention is as follows: rates are assessed upon the annual value of holdings; "holding" means any land with or without buildings thereon; "building" includes "any house, hut, shed, or roofed enclosure, and also any wall, fence, platform, septic tank, staging, gate, post, pillar, paling, frame, hoarding, slip, dock, wharf, pier, jetty, landing-stage or bridge or any structure connected with the foregoing"; the underground tanks are entirely outside this definition of "building", and therefore, not being buildings, they necessarily fall outside the scope and definition of a "holding" the annual value of which is assessed for rates. I believe that I have not inaccurately stated Mr. Hills' argument because it was summarised by Adams J. in these words:

> "Mr. Anthony Hills who appeared to argue the appeal for the appellant company maintained that in no sense of the word could the fuel tanks possibly come within the definition of buildings as defined in the Enactment and therefore the mere fact that they were brought on to the land did not improve its value."

The *ratio decidendi* of that judgment appears on page 280 as follows:

> "If I am right in holding that the improved value of a holding must be based on the land and such things brought on to the land that attach to and form an integral part of the land, that is to say, on the facts of this case, the buildings, then the cost of the tanks must be excluded from the assessment because they are not buildings as defined under the Enactment. This I think must be correct."

On the other hand, Mr. Yong Pung-How, counsel for the respondent, contends that a "holding" is basically "land" and that, while a tank may not be a "building" within the definition contained in the Enactment, its attachment to the soil nevertheless makes it in law part of the land: *quicquid plantatur solo, solo cedit.*

It is thus clear from the arguments that the question presently at issue has been approached from two widely different standpoints. On the one hand, stress is laid by the appellants on the definition of "building" for determining liability to, or exemption from rates. On the other, emphasis is laid on the legal concept of "land", which, the respondent claims, comprises the tanks.

Here I should mention that no such distinction had been observed in the Muar case. In the State of Johore, rates are imposed by the amended section 28(1) of the Town Boards Enactment upon the "improved value" of holdings, and on that ground Adams J. had come to the conclusion that "the improved value of the holding must relate to the value of the land as permanently altered by the erection of buildings or structures attached to buildings:" (see p. 279). The point now raised by Mr. Yong Pung-How never came up then for consideration because the question of what is a structure had been canvassed to the entire exclusion of everything else.

With all respect, therefore, I do not think that, because the primary facts in this and the Muar case are identical, the earlier judgment concludes the matter.

First, I do not consider the niceties and fine distinctions drawn by their Lordships in *Shell-Mex & B.P.* v. *Holyoak* [2] as to whether a tank is in the nature of a structure or partakes of the nature of one, to be of other than academic interest for present purposes. It is common ground here that a tank is neither a building nor a structure.

Secondly, I am of opinion that I ought to reject the too narrow view that was taken of the tanks having necessarily to be related or attached to buildings. A holding may either be "land" simpliciter, or land with buildings.

Thirdly, one fundamental distinction had been lost sight of. Under section 32 of our Town Boards Enactment, rates are payable by the owners of holdings, whereas in England the occupier, and not the thing occupied, is rateable, so that, strictly speaking, it is incorrect to say that land is rateable. "But", to quote *Ryde on Rating,* 11th Edn., p. 16, "as the occupier of land is rateable in respect of that land, it is sometimes convenient, for the sake of brevity, to say that land is rateable. But there is always a danger in substituting for the words of a statute another phrase which is not an exact equivalent. If the substituted phrase be made the foundation of an argument, a fallacy may be involved." A very real distinction in this respect exists between our law and the English law of rating. Land as such is rateable in this country because it is a "holding", so that whatever forms part of the land becomes rateable. Hence it became necessary, in section 2 of the Town Boards Enactment, to insert the proviso that —

> "in estimating the annual value of any holding in or upon which there is any machinery used for the following purposes or any of them,
>
> (a) the making of any article or part of an article;
>
> (b) the altering, repairing, ornamenting or finishing of any article;
>
> (c) the adapting for sale of any article,
>
> the enhanced value given to the holding from the presence of such machinery shall not be taken into consideration;"

The proviso has this effect. It reiterates and

underlines that the legal definition of "land" includes fixtures. Hence all machinery which are fixtures are rateable, saving only the express exceptions. In England, on the other hand, the effect of section 24 of the Rating and Valuation Act, 1925, and of the Plant and Machinery (Valuation for Rating) Order, 1927, is to de-rate all plant and machinery which do not fall within Schedule 3.

For the reasons stated above, I am bound to deal with the issue raised in this appeal as *res integra*. Mr. Yong Pung-How has put his case in very simple terms, that these tanks are land. Mr. Hills, however, contends that "land" must be construed in a restricted sense, that the question of fixtures is irrelevant, that tanks are not land in the everyday meaning of the word, and that being wholly removable they are moveable, and not immovable, property. The question for determination, therefore, is whether these tanks are to be deemed land for rating purposes.

In my view these tanks are land. The definition of "land" is given in section 2 of the Land Code as including things attached to the earth or permanently fastened to anything attached to the earth. Just as "real property" in English law extends to a great deal more than land in everyday speech, so "immovable property" in our Interpretation and General Clauses Ordinance, 1948, "includes land, benefits to arise out of land, and things attached to the earth." In other countries of the common law "land" has also the same meaning. Thus, in *Black's Law Dictionary* (4th Edition), appears this definition of land in the United States of America:

> "Land" includes not only the soil or earth, but also things of a permanent nature affixed thereto or found therein, whether by nature, as water, trees, grass, herbage, other natural or perennial products, growing crops or trees, mineral under the surface, or by the hand of man, as buildings, fixtures, fences, bridges, as well as works constructed for use of water, such as dikes, canals, etc. *Raynard* v. *City of Caldwell*, 55 Idaho 342, 42 P.2d 292, 296; *City of Newport News* v. *Warwick County*, 159 Va. 571, 166 S.E. 579, 580; *Morris Plan Bank of Fort Worth* v. *Ogden*, Tex. Civ. App.; 144 S.W. 2d 998; 2 Bl. Comm. 16, 17; *Sex* v. *Miracle*, 35 N.D. 458, 160 N.W. 716, 719; *Wynn* v. *Margate City*, 9 N.J. Misc. 1324, 157 A. 565, 566. It embraces not only the surface of the earth, but everything under or over it. *Gas Products Co.* v. *Rankin*, 63 Mont. 372, 207 P. 993, 997, 24 A.L.R. 294; *Garnsey Coal Co.* v. *Mudd*, C.C.A. Als., 281 F. 183, 184; *Jones* v. *Vermont Asbestos Corporation*, 108 Vt. 79, 182 A. 291, 303; *Holloway's Unknown Heirs* v. *Whatley*, Tex. Civ. App., 104 S.W. 2d 646 648. It has in its legal signification an indefinite extent upward and downward. *Reynard* v. *City of Caldwell*, 55 Idaho 342, 42 P.2d 292, 296; *Bituminous Casualty Corporation* v. *Walsh & Wells*, Mo. App. 170 S.W. 2d 117, 121. It may include a franchise connected with land. *Delancy* v. *Lowery*, 25 Col. 2d 561, 154 P.2d 674, 679."

In Canada, it was held by the Privy Council that the gas mains laid under the streets of Toronto by a company acting under statutory authority fell within the definition of "land": see *Toronto Corporation* v. *Consumers' Gas Company of Toronto*.[3]

"Fixture" means anything which has become so attached to land as to form in law part of the land. The definitions of "land" which I have quoted above clearly comprise fixtures. More than two score years ago the Federated Malay States Court of Appeal had decided in *Goh Chong Hin & Anor.* v. *Consolidated Malay Rubber Estates Ltd.*,[4] that the English law relating to fixtures applies in this country: see also *Chua Sai Ngoh* v. *Beh Ai Meng*.[5] Hence, for present purposes, I need only refer to this passage in the judgment of Blackburn J. delivered in *Holland* v. *Hodgson*: [6]

> "Perhaps the true rule is, that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to show that they were intended to be part of the land, the onus of showing that they were so intended lying on those who assert that they have ceased to be chattels, and that, on the contrary, an article which is affixed to the land even slightly is to be considered as part of the land, unless the circumstances are such as to show that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel."

The Shell Company's tanks are buried two feet below ground level, and are turfed over or covered with concrete or macadam. The manner of their removal, if it has to be done, shows how firmly the tanks are embedded in the earth. It is described in the evidence of Mr. Carter, Chartered Surveyor, as follows:

> "To remove the tanks, the turf, concrete or tarmacadam is taken up, the earth excavated, the concrete manhole boxes removed, all pipe connections unbolted and the tank, with its concrete sinker weights can then be raised with blocks and tackle."

I think I may here appropriately quote what Lord Denning said in the *Shell-Mex* case:

> "To my mind, it is a mistake to fret about this way or that way of putting the case. The decision should not rest on such niceties. Suffice it to take hold of the cardinal fact that this metal cylinder was built into the structure so as to form one integral whole. It is that fact which makes it rateable as part of the hereditament. It is that fact which counsel stressed. The rest is all words and not substance; and words are delusive things anyway."

I would substitute "attached to the earth" for the phrase "built into the structure". The resulting conclusion is inevitable. The tanks, when placed underground, were intended to remain *in situ* for as long as the filling-stations continue in operation. They are liable to be disturbed and replaced only in case an increase of storage capacity becomes necessary. Hence their attachment to the earth is, for all practical purposes, as permanent as the buildings erected on the filling stations. Their removability, when severance reconverts them into chattels or movable property, does not alter the fact of their integretion with the land upon attachment thereto. An

example will suffice. Bricks built into a house become land until the house gets pulled down, when the building material by severance from the land becomes reconverted into chattels. The instance cited by Mr. Carter, of the Shell Company removing their tanks from their Nee Soon Station upon the termination of the lease, is irrelevant because there is no evidence as to the terms of the lease. Finally, the fact that the tanks retain their identity as such below ground is entirely immaterial because oak trees, rubber trees and oil palms are no less part of the land although they are growing things and not earth.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw*; *Shook Lin & Bok.*

OLOOFSEN v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) June 2. 1964]

[Singapore — Magistrate's Appeal No. 247 of 1963]

Criminal Procedure — Sentence — Appeal — Criminal Procedure Code (Cap. 132), s. 299.

Criminal Law — Dangerous drug — Morphine — Possession — Trafficking — Deterrent sentence.

Once there is an appeal against sentence under section 299 of the Criminal Procedure Code the court has power to reduce or enhance the sentence or to alter the nature of the sentence. This is a power which though rarely used by the court when an appellant appeals against the sentence on the grounds that it is too severe or manifestly excessive is nonetheless there and in a proper case should be exercised by the court. This power though rarely used must be brought more to the attention of persons who come before the appellate court on the question of sentence.

Possession of morphine is a most serious offence. Where a person is found to be in possession of drugs such as this in such quantities as to show positively and convincingly and clearly that he is engaged in trafficking in this drug a deterrent sentence should be imposed. A fine can never be a deterrent sentence in a case like this. The only proper sentence is a term of imprisonment besides a fine.

CRIMINAL APPEAL.

Lal Behari Singh for the appellant.

T. C. Cheng (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J.: I do not agree with the arguments put forward by counsel for the appellant that this is one offence and that it was broken up into parts and that the accused has been convicted and sentenced in respect of two separate parts of one offence of possession.

The facts to prove the charges against the accused were different and in my opinion the magistrate was acting within his powers in imposing separate sentences in respect of the two separate charges.

The only question that has caused me concern is not so much whether the sentences were legal but whether they are adequate in this particular case and I see that under section 299 of the Criminal Procedure Code once there is an appeal against sentence the court has power to reduce or enhance the sentence or to alter the nature of the sentence. This is a power which though rarely used by the court when an appellant appeals against the sentence on the grounds that it is too severe or manifestly excessive is nonetheless there and in a proper case should be exercised by the court. This power though rarely used must be brought more to the attention of persons who come before this court on the question of sentence. It is a most serious offence to be in possession of morphine. It is a drug which can cause serious consequences to persons who are addicted to it. It is of course a dangerous drug, a deleterious drug, and the only reason why the learned magistrate did not impose a sentence of imprisonment was because of the fact that the appellant had a clean record. It appears that perhaps he also took into consideration the fact that he was a partner of a firm which had recently exported a large quantity of cattle fodder to Japan. Those considerations are I think quite out of place in a case where a person is found to be in possession of drugs such as this, not in small quantities which may be because he is an addict but obviously in such quantities as to show positively and convincingly and clearly that he is engaged in trafficking in this drug and unless deterrent sentences are imposed and a fine can never be a deterrent sentence in a case like this, this sort of traffic will continue to be carried on in this part of the world.

Now, having said all that and as I think this is the first instance so far as I am concerned where an appeal in respect of this kind of dangerous drug has been brought before me as regards sentence, it may perhaps be sufficient if I make my views known and not disturb the present sentence imposed. I do not disturb it, not because it is in my opinion sufficient in this particular case, but because this is the first instance on which I have had an opportunity of making known what ought to be a proper sentence and the only proper sentence in a case like this is in my opinion a term of imprisonment besides a fine.

I accordingly dismiss the appeal and with great reluctance affirm the fine imposed.

Appeal dismissed.